

111TH CONGRESS
2D SESSION

H. R. 5689

To amend the Truth in Lending Act to provide an interest rate cap and other requirements for creditors making covered loans, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 1, 2010

Ms. GIFFORDS (for herself and Mr. POLIS of Colorado) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Truth in Lending Act to provide an interest rate cap and other requirements for creditors making covered loans, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Predatory Lending
5 Sunset Act”.

6 **SEC. 2. COVERED LENDING.**

7 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
8 ing Act (15 U.S.C. 1631 et seq.) is amended—

9 (1) by redesignating the second section 129 (as
10 so designated by section 201(b) of the Helping Fam-

1 ilies Save Their Homes Act of 2009) as section
 2 129A; and

3 (2) by inserting after section 129A, as so redes-
 4 ignated, the following new section:

5 **“SEC. 129B. COVERED LENDING.**

6 “(a) MAXIMUM INTEREST RATE.—The maximum in-
 7 terest rate a creditor may charge on a covered loan shall
 8 be the rate equal to an annual percentage rate of 36 per-
 9 cent.

10 “(b) PROHIBITION ON USING CERTAIN MEANS OF
 11 ACCESS FOR SECURITY.—It shall be unlawful for any
 12 creditor to extend a covered loan with respect to which
 13 the creditor uses, as security for the obligation or as a
 14 condition of extending the credit—

15 “(1) a check or other method of access to a de-
 16 posit, savings, or other financial account maintained
 17 by the borrower; or

18 “(2) the title of a vehicle.

19 “(c) DEFINITIONS.—For purposes of this section, the
 20 following definitions shall apply:

21 “(1) ANNUAL PERCENTAGE RATE.—Notwith-
 22 standing the manner described in section 107 for de-
 23 termining the annual percentage rate, the term ‘an-
 24 nual percentage rate’ means all charges payable di-
 25 rectly or indirectly incident to, ancillary to, or as a

1 condition of the extension of a covered loan, includ-
2 ing—

3 “(A) all fees which constitute a finance
4 charge; and

5 “(B) any other payments, fees or charges,
6 including but not limited to application, mem-
7 bership and administrative fees, compensating a
8 creditor for making the covered loan.

9 “(2) COVERED LOAN.—The term ‘covered
10 loan’—

11 “(A) means a consumer credit transaction
12 that—

13 “(i) is unsecured by any interest in
14 the consumer’s personal property;

15 “(ii) is in an amount that does not ex-
16 ceed \$3,000 or, in the case of a line of
17 credit, a credit limit that does not exceed
18 \$3,000;

19 “(iii) in the case of a closed end credit
20 transaction, has a term of 91 days or less;
21 and

22 “(iv) in the case of an open end credit
23 transaction—

24 “(I) has an amortization period
25 of 91 days or less; or

1 “(II) in the case of a line of cred-
2 it, the amount due in the first 91
3 days, including finance charges, fees,
4 service charges, renewals, credit insur-
5 ance premiums, and any other charge
6 or premium with respect to the exten-
7 sion of credit, exceed 25 percent of
8 the credit limit of the line of credit;
9 and

10 “(B) does not include a non-recourse ex-
11 tension of credit—

12 “(i) extended by a pawn broker cred-
13 itor; and

14 “(ii) secured by a possessory security
15 interest in tangible goods physically deliv-
16 ered by the consumer to the pawn broker
17 creditor, for which the consumer does not
18 provide a written or electronic promise,
19 order, or authorization to pay, or in any
20 other manner authorize a debit of a de-
21 posit account, prior to or contempora-
22 neously with the disbursement of the origi-
23 nal proceeds and the creditor takes no se-
24 curity other than the goods and makes no
25 effort to collect the credit.

1 “(3) CREDITOR.—Notwithstanding the defini-
2 tion of the term ‘creditor’ in section 103, the term
3 ‘creditor’—

4 “(A) means a person who makes or offers
5 covered loans; and

6 “(B) includes—

7 “(i) any affiliate of a creditor that of-
8 fers or makes a covered loan, buys a whole
9 or partial interest in a covered loan, ar-
10 ranges a covered loan for a third party, or
11 acts as an agent for a third party in mak-
12 ing a covered loan, regardless of whether
13 approval, acceptance, or ratification by the
14 third party is necessary to create a legal
15 obligation for the third party; and

16 “(ii) any other person or entity that is
17 engaged in a transaction that is in sub-
18 stance a disguised covered loan or a sub-
19 terfuge for the purpose of avoiding the re-
20 quirements of this section.”.

21 (b) CLOSING THE SINGLE PAYMENT LOOPHOLE.—
22 Section 903(9) of the Electronic Fund Transfer Act (15
23 U.S.C. 1693a(9)) is amended by striking “to recur at sub-
24 stantially regular intervals”.

1 (c) REMOTELY CREATED CHECKS PROHIBITED.—
2 Section 905 of the Electronic Fund Transfer Act (15
3 U.S.C. 1693c) is amended by adding at the end the fol-
4 lowing new subsection:

5 “(d) REMOTELY CREATED CHECKS PROHIBITED.—

6 “(1) IN GENERAL.—No person shall deposit,
7 pay, obtain payment with respect to, or otherwise
8 negotiate a remotely created check.

9 “(2) REMOTELY CREATED CHECK DEFINED.—

10 For purposes of this subsection, the term ‘remotely
11 created check’ means a check that—

12 “(A) is not created by the financial institu-
13 tion that holds the customer account from
14 which the check is to be paid; and

15 “(B) does not bear a signature applied, or
16 purported to be applied, by the person from
17 whose account the check is to be paid.”.

18 (d) TREATMENT OF STATE LAW.—No provision of
19 this Act or any amendment made by this Act shall be con-
20 strued as—

21 (1) preempting any provision of State law, to
22 the extent that such State law provides greater pro-
23 tection to consumers than is provided under such
24 provision;

1 (2) preventing any State from enacting any
2 provision of law that provides greater protection to
3 consumers than is provided under such provision;

4 (3) authorizing covered loans to be made in a
5 State where they are otherwise not permitted under
6 State law; or

7 (4) authorizing an extension of credit at an an-
8 nual percentage rate that would be prohibited by ap-
9 plicable State law.

10 (e) UNENFORCEABILITY OF CONTRACTS.—No con-
11 tract made in violation of this Act or any amendment
12 made by this Act may be enforced with respect to any con-
13 sumer.

14 (f) DEFINITIONS.—For purposes of this Act, the
15 terms “consumer” and “covered loan” shall have the
16 meaning given those terms under the Truth in Lending
17 Act.

18 (g) CLERICAL AMENDMENT.—The table of sections
19 for chapter 2 of the Truth in Lending Act is amended
20 by inserting after section 129 the follow new items:

“129A. Duty of servicers of residential mortgages.
“129B. Covered lending.”.

21 (h) EFFECTIVE DATE.—The amendments made by
22 this Act shall take effect at the end of the 180-day period
23 beginning on the date of the enactment of this Act and

- 1 shall apply to all covered loans initiated on or after such
- 2 date.

